

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH VOLFMAN,

Plaintiff,

-against-

ATS RESTAURANT CORP. d/b/a  
O'HANLON'S, *et al.*,

Defendants.  
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24-CV-6061 (VSB)

**ORDER**

VERNON S. BRODERICK, United States District Judge:

On August 9, 2024, Plaintiff filed this action against Defendants. (Doc. 1.) Plaintiff obtained a summons for each Defendant on August 12, 2024. (Docs. 5–6.) To date, Plaintiff has not filed an affidavit of service or taken any other action to prosecute this case. Accordingly, it is hereby:

ORDERED that, no later than December 16, 2024, Plaintiff shall submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). “Good cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (internal quotation marks omitted). “District courts consider the diligence of plaintiff’s efforts to effect proper service and any prejudice suffered by the defendant as a consequence of the delay.” *Id.* (internal quotation marks omitted). “An attorney’s inadvertence, neglect, mistake or misplaced reliance does not constitute good cause.” *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F.Supp. 654, 658 (S.D.N.Y.1997) (citing *McGregor v. United States*, 933 F.2d 156, 160 (2d Cir.1991), *aff’d*, 173

F.3d 844 (2d Cir.1999)). Plaintiff is warned that failure to submit a letter and to demonstrate good cause for failure to serve Defendants within ninety days after the complaint was filed will result in dismissal of this action.

SO ORDERED.

Dated: December 11, 2024  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick", written over a horizontal line.

VERNON S. BRODERICK  
United States District Judge